IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8918 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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LAXMANBHAI THOBHANBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 8918 of 2004

MR KM PATEL for Petitioner No. 1

Mr. Sood, AGP for Respondent No. 1-2

..... for Respondent No. 3

NOTICE SERVED BY DS for Respondent No. 3/1-4

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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 25/08/2004

ORAL JUDGEMENT

Rule. Mr. Sood, learned AGP waives service of Rule. With the consent of parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the judgment and order dated 2/9.4.2004 passed by the Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad in Revision Application No. 119 of 2003 in dismissing the same and confirming the order passed by the Collector, Surat, in April 2003 in Revision Application No. 29 of 2003 in cancelling Entry No. 2468 along with Entries No. 638 and 828 with regard to the land in question.

3. The petitioner is the purchaser of the land in question. One Rasiklal Amrutlal Prajapati was owner of the land in question. Necessary Entry to that effect was also made being Entry No.638 on 5.7.1975 and the same was certified on 8.8.1975. Thereafter another entry was made made being Entry No. 828 dated 7.7.1978 on the basis of registered Sale Deed dated 3.7.1978. Thereafter the petitioner purchased the land in question by registered sale deed dated 12th January 1996 and necessary entry to that effect was also made in the revenue record vide Entry No. 2468. It seems that the Collector, Surat was of the opinion that there is a breach of provisions of the Bombay Tenancy and Agricultural Lands Act. He has taken the entries No. 638 and 828 into suo motu review and proceedings were initiated and after giving an opportunity to the original land owners entries No. 638 and 828 came to be set aside by the Collector, Surat by order passed in April 2003. However, considering the entries No. 638 and 828, the Collector, Surat set aside the Entry No. 2468 which was in favour of the petitioner without giving any opportunity of hearing to the petitioner. Being aggrieved and dissatisfied with the order passed by the Collector, Surat, in cancelling Entries No. 638, 828 and 2468 with respect to the land in question, the petitioner preferred revision application before the Secretary (Appeals) being Revision Application No. 119 of 2003. Number of contentions were raised in the revision application including the contention that before passing the order the Collector has not given any opportunity to the petitioner and the entry which was in favour of the petitioner came to be cancelled. Number of contentions were raised on merits also to show that the petitioner was in fact an agriculturist and there was no breach of Section 63 of the Tenancy Act. Still, it is the case of the petitioner that even without giving any opportunity of being heard the Secretary (Appeals) by his judgment and order dated 2/9.4.2004 dismissed the said revision application confirming the order passed by the Collector, Surat in April 2003 without even considering the fact that the

order came to be passed by the Collector setting aside the entry which was in his favour without giving any opportunity to the petitioner.

4. Shri KM Patel, learned advocate appearing for the petitioner has submitted that in view of the fact that the order passed by the Collector, Surat cancelling the entries was without giving opportunity of hearing to the petitioner, the Secretary (Appeals) ought to have allowed the revision application and ought to have set aside the order passed by the Collector. He has further submitted that even the Secretary (Appeals) has not given opportunity of hearing to the petitioner and straightway the impugned order has been passed which requires to be quashed and set aside.

5. In response to the notice issued by this Court, Shri Sood, learned AGP appears on behalf of the respondents. He could not point out from the record that the petitioner was in fact heard by the Collector or not. From the record, it is clear that the petitioner was not heard and no opportunity of hearing was given to the petitioner by the Collector before cancelling the aforesaid entries. This aspect is also not considered by the Secretary (Appeals). Under the circumstances, in view of the fact that the order passed by the Collector cancelling the entries No. 638, 820 and 2468 is without giving any opportunity to the petitioner who has purchased the land by registered sale deed in 1996, the said order passed by the Collector is required to be quashed and set aside and is hereby quashed and set aside. The judgment and order passed by the revisional authority dated 2/9.4.2004 in Revision Application No. 119 of 2003 is also quashed and set aside. The order passed by the Collector is set aside only on the ground that there is violation of principles of natural justice. This Court has not gone into the merits of the case at all with regard to the validity of the transaction. Rule is made absolute with no order as to costs.

rmr. [ M.R. Shah, J. ]